IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

Crl.Rev.Pet.No. 471 of 1999()

CRA.164/1996 of IST ADDL.SESSIONS COURT, KOZHIKODE
ST.4810/1995 of JUDL. MAGISTRATE OF FIRST CLASS-III, KOZHIKODE
.....

REVN. PETITIONER: APPELLANT/ ACCUSED

M.T.MOHAMMED,
S/O.PAREEKUTTY,
1/110, GANDHI NAGAR SUPER MARKET,
WEST HILL, CHUNGAM, CALICUT.

BY ADV. SRI.P.M.MOHAMED ALI
SRI.MAT.PAI

RESPONDENT/ RESPONDENT/ COMPLAINANT

STATE OF KERALA, REP.BY
THE FOOD INSPECTOR, CALICUT
CORPORATION, CALICUT.

BY ADV. SRI.KPG.MENON
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.RP. NO.471/1999

ORDER ON CRL.MP.2048/1999 CRL.RP. 471/1999

DISMISSED

25.07.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S.TO JUDGE

tss

K.R. UDAYABHANU, J.

CRL.R.P.NO. 471 OF 1999

DATED THIS THE 25th July 2007

ORDER

The revision petitioner stands convicted for the offence under Sections 2(1a)(M)(7)(1) and 16(1)(ii) of the Prevention of food Adulteration Act and Rules and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for one month. the prosecution case is that on 7-9-1991 at about 1 p.m. the Food Inspector, Calicut Corporation visited the shop of the accused bearing No. 1/110 Gandhi Nagar Super Market, West Hill, Chungam wherein the revision petitioner was the Vendor and the 2nd accused was the licensee (2nd accused is absconding) and purchased 600 grams of chilly powder received from the petitioner and the same was found to be adulterated. The evidence adduced in the matter consisted of the testimony of PWs. 1 to 3 and Exts.P1 to P11.

2. The contention raised by counsel for the revision petitioner is that the sampling has not been done as provided 11(1)(b) of the Act which provides that except in special cases provided by the Rules the sample should be divided then and there into three parts etc. Rule 22(a) is for such special cases where the food is sold or stocked for

sale or for distribution in sealed containers having identical label declarations and in which cases the contents of one or more of such containers as may be required to satisfy the quantity prescribed in Rule 22 shall be treated to be a part of the sample. It is pointed out that in the instant case Ext.P3 seizure mahazar is absolutely silent as to the compliance of the conditions specified in Rule 22(a). What has been mentioned is only that six packets of 100 grams each of curry powder with trade name Hamsa Curry Powder was purchased. Counsel has also relied on the decision in **Food Inspector v. Jose, 1987(2)K.L.T. 190** wherein also for the above lapse on the part of the Food Inspector, the accused was acquitted. In the above case, the Food Inspector divided 51 packets of coffee powder that he purchased into three parts each containing 17 packets and wrapped and sealed in accordance with the Rules. The above mode adopted by the Food Inspector is not in compliance with Section 11(1)(b) of the Act as the condition stipulated in Rule 22A has not been complied with. I find that both the courts below have not considered the above aspect properly and has just brushed aside the contention in this regard on the ground that chilly powder was found to be packed and contained the label "Hamsa Curry Powder". I find that the Food Inspector has

not complied with the statutory mandate in this regard. Considering the fact that the statute provides stringent punishment, strict evidence is contemplated. In the circumstances the findings of the courts below convicting the accused is herewith set aside. The accused is acquitted.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P.NO. 471 OF 1999
ORDER

25-7-2007